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**United International Investigative Services, Inc. and
Federation of Police, Security and Correction
Officers, AFSPA. Case 5-CA-29490**

December 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND
WALSH

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge and an amended charge filed by the Union on February 6, 2001, and June 7, 2001, respectively, the General Counsel issued a complaint on September 30, 2002, against United International Investigative Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent did not file an answer to the complaint.

Subsequently, on July 14, 2003, the Regional Director approved an informal settlement agreement entered into by the Respondent and the Union. Among other things, the settlement agreement required the Respondent to pay employee Susan McPherson \$373.12 and employee Alfonso Terrell \$186.56. The agreement also contains the following provision:

In the event of non-compliance with this Settlement Agreement, the allegations in a Complaint issued with regard to the violations covered by the Settlement Agreement will be deemed admitted. Upon Motion for Summary Judgment the Board may, without the necessity of trial, find all allegations of the Complaint to be true, adopt findings of fact and conclusions of law consistent with the Complaint allegations, and issue an appropriate Order. Subsequently, a judgment from a U.S. Court of Appeals may be entered *ex parte*.

By letter dated September 15, 2003, counsel for the General Counsel advised the Respondent that it had not complied with the terms of the settlement agreement in that the Respondent had failed to pay McPherson and Terrell the amounts owed to them. This letter stated that the Region would place this matter back on the docket for litigation if the payments were not made. In response, the Respondent's representative, Kathleen Guidice, informed the Region that the Respondent was filing for bankruptcy and was unable to make the payments and that the Respondent would not file an answer

to the complaint nor appear at an unfair labor practice hearing.

By letter dated September 16, 2003, counsel for the General Counsel confirmed the Respondent's position and advised the Respondent to reply by September 19, 2003, if this understanding was correct. The Respondent, by Guidice, subsequently notified counsel for the General Counsel that he had correctly understood the Respondent's position and that the Region should take whatever actions necessary to close out this case.

By letter dated September 22, 2003, the compliance officer for Region 5 advised the Respondent that the Region had not received the money due to McPherson and Terrell, and that if these payments were not received by October 2, 2003, she would recommend to the Regional Director that a Notice to Show Cause be issued.

On October 7, 2003, the Regional Director for Region 5 issued a Notice to Show Cause why he should not conclude that the Respondent had failed to comply with the settlement agreement and take actions to enforce the agreement. The Respondent did not respond to this Notice to Show Cause.

On December 4, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On December 8, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the General Counsel's Motion for Summary Judgment, the Respondent has failed to comply with the settlement agreement approved by the Regional Director on July 14, 2003, by failing to remit the agreed-upon amounts due employees McPherson and Terrell. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.

Accordingly, we grant the General Counsel's Motion for Summary Judgment, and will order the Respondent immediately to remit to the Region \$373.12 to be paid to Susan McPherson and \$186.56 to be paid to Alfonso Terrell, as provided in the settlement agreement.¹

¹ As indicated above, the Respondent has informed the Region that the Respondent was filing a petition for bankruptcy. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation has been engaged in the business of providing security services to the United States Government and other businesses throughout the United States, including locations in Baltimore, Maryland, and Alexandria, Virginia, the only locations involved herein. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 to the United States Government. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Further, we find that Federation of Police, Security and Correction Officers, AFSPA (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

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| Linda Bogner | Contract Compliance |
| Kathleen Guidice | Chief Executive Officer |
| William J. Guidice | Chief Executive Officer |
| William Gunter | District Supervisor |
| Jack Parra | Contract Compliance |
| Edward M. Rubinstein | Vice President, Legal Affairs |
| Debra Wilcoxson | Vice President, Human Resources |
| James Wisener | Chief Executive Officer |

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time Federal Court Security Officers and Lead Federal Court Security Officers employed by Respondent [on its locations in Baltimore, Maryland and Alexandria, Virginia, the only locations involved herein]; excluding all other employees, including office clerical employees and professional employees as defined in the National Labor Relations Act.

Since in or around April 1999, the Union has been the designated exclusive collective-bargaining representative of the unit set forth above, and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement (the Agreement), which is effective from April 1, 1999 to September 30, 2004.

At all times since April 1999, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since in or around September 2000, the Respondent has repudiated, wholesale, article 10 of the Agreement by, but not limited to, failing and refusing to properly advance grievances through the grievance and arbitration process, failing and refusing to select arbitrators, and failing and refusing to schedule meetings to select arbitrators.

Since on about November 2, 2000, the Respondent has refused to comply with its obligations under article 22 of the Agreement by refusing to reimburse union officers for time spent attending union-sponsored training programs.

Since on about November 13, 2000, the Respondent has refused to comply with its obligations under article 20, section 4 of the Agreement by refusing to allow employees to accrue sick leave and personal leave from year to year.

On about November 13, 2000, the Respondent discontinued paying employees' uniform allowance, pension contributions, and health and welfare moneys for employees' authorized leave hours.

On about January 1, 2001, the Respondent implemented a change in policy regarding physical exams by requiring employees to go to a health clinic designated by the Respondent for such exams, or receive a maximum of \$35 reimbursement for the cost of a physical exam, instead of 100 percent reimbursement.

The subjects set forth above relate to the wages, hours, and other terms and conditions of employment of the unit, are covered by the Agreement, and are mandatory subjects for the purposes of collective bargaining. By engaging in the conduct described above, the Respondent failed to continue in effect all the terms and conditions of

fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

the Agreement. The Respondent engaged in this conduct without the Union's consent.

On about December 19, 2000, the Respondent, by William J. Guidice, in a telephone conversation with employees at the Federal Courthouse in Alexandria, Virginia, threatened employees with discharge because they had filed grievances.

CONCLUSIONS OF LAW

1. By failing to continue in effect all the terms and conditions of the Agreement, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

2. By threatening employees with discharge because they had filed grievances, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

As discussed above, the Respondent and the Union entered into an informal settlement agreement that was approved by the Regional Director. The settlement agreement set forth the agreed-upon remedy for the Respondent's unfair labor practices found above. According to the General Counsel's motion, the Respondent has complied with the terms of the settlement agreement in all respects, except that it has failed to pay the amounts due employees McPherson and Terrell. Thus, as requested by the General Counsel, we shall order the Respondent to

pay the two employees the amounts provided in the agreement.

ORDER

The National Labor Relations Board orders that the Respondent, United International Investigative Services, Inc., Baltimore, Maryland and Alexandria, Virginia, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act:

(a) Pay Susan McPherson \$373.12 and Alfonso Terrell \$186.56.²

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 2003

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| Robert J. Battista, | Chairman |
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| Wilma B. Liebman, | Member |
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| Dennis P. Walsh, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

² The total amount of backpay is \$559.68. As provided in the Settlement Agreement, "The Charged Party will make appropriate withholdings for each named employee." As noted above, the settlement agreement provides that, in the event of noncompliance, a judgment by a United States Court of Appeals may be entered ex parte enforcing the Board's Order.